

**DIRECT TESTIMONY OF****ROBERT A. LAWYER****ON BEHALF OF****THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF****DOCKET NOS. 2019-185-E AND 2019-186-E****IN RE: APPLICATIONS OF DUKE ENERGY CAROLINAS, LLC AND****DUKE ENERGY PROGRESS, LLC FOR APPROVAL OF STANDARD****OFFER, AVOIDED COST METHODOLOGIES, FORM CONTRACT****POWER PURCHASE AGREEMENTS, COMMITMENT TO SELL FORMS,****AND OTHER RELATED TERMS AND CONDITIONS****Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

**A.** My name is Robert A. Lawyer. My business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina as a Senior Regulatory Manager in the Utility Rates and Services Division of the Office of Regulatory Staff ("ORS").

**Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

**A.** I received my bachelor's degree in from Clemson University in 1994. Prior to my employment with ORS, I held a variety of positions in finance, accounting, auditing, and management. I joined ORS in 2007 as an Auditor and assumed my current position of Senior Regulatory Manager in May 2016.

**Q. HAVE YOU TESTIFIED BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA ("COMMISSION")?**

1     **A.**            Yes. I have testified on numerous occasions before the Commission in matters  
2           related to electric utility general rate cases and annual fuel clause proceedings.

3     **Q.     WHAT IS THE MISSION OF ORS?**

4     **A.**            ORS represents the public interest as defined by the South Carolina General  
5           Assembly as:

6                   [t]he concerns of the using and consuming public with respect to public  
7                   utility services, regardless of the class of customer, and preservation of  
8                   continued investment in and maintenance of utility facilities so as to provide  
9                   reliable and high quality utility services.

10    **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11    **A.**            The purpose of my testimony is to set forth the results of ORS's examination of  
12           Duke Energy Carolinas, LLC's ("DEC") and Duke Energy Progress, LLC's ("DEP")  
13           (collectively referred to as the "Companies") compliance with certain sections of the South  
14           Carolina Energy Freedom Act ("Act 62" or the "Act") and to support any recommendations  
15           resulting from ORS's review of the Companies' filings in this docket.

16    **Q.     WAS THE REVIEW PERFORMED BY YOU OR UNDER YOUR SUPERVISION?**

17    **A.**            Yes. The review to which I testify was performed by me or under my supervision.

18    **Q.     DID ORS EMPLOY AN EXPERT IN THIS PROCEEDING?**

19    **A.**            Yes. ORS retained Energy and Environmental Economics, Inc. ("E3") to analyze  
20           the Companies' standard offers, avoided cost methodologies, form contract PPAs,  
21           commitment to sell forms, and corresponding terms and conditions. All forms, including  
22           terms and conditions, were reviewed for compliance with the Act, regulations and orders  
23           promulgated by the Federal Energy Regulatory Commission ("FERC"), Public Utility  
24           Regulatory Policies Act of 1978 ("PURPA"), and industry standards. E3 also examined the  
25           Companies' integrated resource plans, avoided capacity and energy cost calculations,

integration services charges, and other charges proposed by the Companies and contained in the direct testimonies of the Companies witnesses Glen Snider and Nick Wintermantel. Details of these analyses and examinations are contained in the direct testimony of ORS witness Brian Horii.

**Q. UNDER ACT 62, WHAT ELEMENTS INFORMED YOUR REVIEW OF THE COMPANIES' FILING?**

**A.** ORS relied on the requirements provided in Section 58-41-20(A) of Act 62. Specifically, that section states,

“[a]ny decisions by the commission shall be just and reasonable to the ratepayers of the electrical utility, in the public interest, consistent with PURPA and the FERC’s implementing regulations and orders, and nondiscriminatory to small power producers; and shall strive to reduce the risk placed on the using and consuming public.”

In addition, ORS relied on Section 16 of the Act which states,

Notwithstanding another provision of this act, or another provision of law, no costs or expenses incurred nor any payments made by the electric utility in compliance or in accordance with this act must be included in the electrical utility’s rates or otherwise borne by the general body of South Carolina retail customers of the electrical utility without an affirmative finding supported by the preponderance of evidence of record and conclusion in a written order by the Public Service Commission that such expense, cost or payment was reasonable and prudent and made in the best interest of the electrical utility’s general body of customers.

**Q. WHAT DOES SECTION 58-41-20(A) OF ACT 62 REQUIRE?**

**A.** The Act requires, and the Companies’ filing includes, the following items for each Company:

- (1) Standard Offers;
- (2) Avoided cost methodologies;
- (3) Form power purchase agreements (“PPA”);

1 (4) Commitment to sell forms; and

2 (5) Other terms or conditions necessary to implement this section of Act 62.

3 **Q. WHAT DOES ACT 62 REQUIRE FOR NON-STANDARD OFFER PPAS?**

4 **A.** The non-standard offer PPAs are required to contain provisions, including, but not  
5 limited to, that address force majeure, indemnification, choice of venue, and  
6 confidentiality. Additionally, the Companies non-standard offer PPAs contain provisions  
7 for various generation technologies and other project specific characteristics, such as  
8 energy storage. The Companies non-standard offer PPA's do not specify any pre-  
9 determined contract price or length of contract term.

10 **Q. ON PAGE 3 OF HIS DIRECT TESTIMONY, COMPANY WITNESS BROWN**  
11 **STATES THAT ACT 62 "REQUIRES THE COMMISSION TO BIENNIALY**  
12 **REVIEW AND APPROVE THE COMPANIES' IMPLEMENTATION OF PURPA**  
13 **IN SOUTH CAROLINA." IS THIS A REQUIREMENT OR DOES THE**  
14 **COMMISSION RETAIN SOME FLEXIBILITY?**

15 **A.** Section 58-41-20(A) of Act 62 states, "[a]t least once every twenty-four months  
16 thereafter, the commission shall approve each electric utility's standard offer, avoided cost  
17 methodologies, form contract power purchase agreements, commitment to sell forms, and  
18 any other terms or conditions necessary to implement this section." (emphasis added) ORS  
19 does not necessarily object to a biennial review and approval process; however, the Act  
20 may allow the Commission the flexibility and discretion to determine the review  
21 timeframe. The Commission may determine a more frequent review is necessary, and the  
22 Act does not prohibit a more frequent review.

**Q. ON PAGE 8 OF HIS DIRECT TESTIMONY, COMPANY WITNESS BROWN DESCRIBES THE COMPANIES' INTERPRETATION OF PURPA'S "MANDATORY PURCHASE OBLIGATION." WHO PAYS THE COSTS FOR THIS OBLIGATION UNDER PURPA?**

**A.** PURPA provides QFs the right to interconnect with the Companies' electrical grid and requires the Companies to purchase the QF's energy and capacity at "avoided cost." The energy and capacity are ultimately paid by all customers on an annual basis in the Companies' respective Fuel Adjustment Clause proceedings under S.C. Code Ann. § 58-27-865. The Companies' customers will pay for the energy and capacity at avoided costs and it is of vital importance that the avoided cost methodologies employed by the Companies and the resulting energy and capacity rates fully, fairly, and accurately account for costs avoided or incurred by the utilities in accordance with Section 58-41-20 (B)(3) of Act 62. ORS witness Horii addresses the avoided cost methodologies and resulting calculations in his direct testimony.

**Q. HOW DO THE INTEGRATION SERVICES CHARGES PROPOSED BY THE COMPANIES IMPACT CUSTOMERS?**

**A.** The Companies' proposed integration services charges represent the Companies' efforts to account for the costs of additional ancillary services incurred by the Companies to safely and reliably integrate additional solar generation onto their electric systems. The proposed integration services charges are designed to assign costs to the QFs who cause the Companies to incur the costs to integrate solar generation. This rate design minimizes the risk to the Companies' customers by directly assigning integration costs to the QF. Section 58-41-20(B)(3) of Act 62 requires that these ancillary costs be accounted for in the

1 avoided cost methodologies employed by the Companies. One of the challenges in setting  
2 a fair and balanced integration services charge is to establish a rate that benefits the  
3 Companies' customers by limiting the risk of subsidization, yet expands private investment  
4 in solar development. Details regarding the Companies' proposed integration services  
5 charges are contained in the direct testimony of ORS witness Brian Horii.

6 **Q. DOES ACT 62 REQUIRE AVOIDED ENERGY AND CAPACITY RATES BE**  
7 **ESTABLISHED AS A RESULT OF A COMPETITIVE PROCUREMENT OR**  
8 **REFLECTIVE OF MARKET PRICING?**

9 **A.** No. Section 58-41-20(B)(1) of Act 62 requires that "rates for the purchase of energy  
10 and capacity fully and accurately reflect the electrical utility's avoided costs." However,  
11 competitive procurement and/or market pricing is a future opportunity afforded by Section  
12 58-41-20(E)(2) of Act 62 to the Commission should the Commission determine  
13 competitive procurement to be in the public interest.

14 **Q. DOES ORS SUPPORT THE MODIFICATIONS PROPOSED BY THE**  
15 **COMPANIES TO THE TERMS AND CONDITIONS FOR THE STANDARD**  
16 **OFFER PPA?**

17 **A.** Yes. ORS reviewed the proposed modifications and did not find instances where  
18 the modifications would degrade the Companies' ability to provide reliable service or shift  
19 costs to the Companies' customers.

20 **Q. WHAT IS THE EFFECTIVE DATE FOR THE STANDARD OFFER TARIFFS?**

21 **A.** According to Company witness Wheeler's direct testimony (Page 9), the  
22 Companies' Standard Offer tariffs were suspended on November 30, 2018, when the  
23 Companies filed their Application for Approval of Updated Standard Offer Avoided Cost

1 Rates and Tariffs in Docket No. 1995-1192-E. In that docket, the Companies indicate any  
2 commitments to sell under Standard Offers exercised after November 30, 2018, will be  
3 priced under the new Standard Offer tariffs. On April 4, 2019, in Docket No. 1995-1192-  
4 E, the Commission Standing Hearing Officer issued a Directive in response to a motion  
5 from the South Carolina Solar Business Alliance to suspend the pre-file testimony dates  
6 and hearing date. In the intervening months after the Standing Hearing Officer Directive  
7 suspending the pre-file testimony and hearing dates, ORS received no complaints from  
8 solar developers or customers regarding the Companies suspension of the Standard Offer  
9 tariffs.

10 **Q. PLEASE EXPLAIN ORS'S RECOMMENDATIONS REGARDING THE**  
11 **COMPANIES' PROPOSED STANDARD OFFER TARIFFS, PPAS, AND TERMS**  
12 **AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER.**

13 **A.** ORS recommends a change to the Companies' proposed standard offer tariffs. The  
14 Standard Offer tariffs (Schedule PP and Schedule PP-5) make references to "biennial  
15 avoided cost proceedings" and state "Schedule will be updated every two years." The  
16 Commission may have the flexibility under Act 62 to determine when proceedings and/or  
17 updates occur, as long as it occurs "at least every twenty-four months." ORS recommends  
18 the Commission require the Companies update the proposed Standard Offer tariffs, PPAs,  
19 and Terms and Conditions to conform to the temporal determination made by the  
20 Commission. ORS also recommends the Commission require the Companies provide  
21 updated forms to the Commission and ORS for review prior to implementing the forms to  
22 ensure compliance with any Commission orders.

1 **Q. DOES ORS HAVE ANY OTHER RECOMMENDATIONS REGARDING THE**  
2 **COMPANIES' FILINGS?**

3 **A.** Yes. ORS's other recommendations are provided in ORS witness Horii's  
4 testimony. The ORS recommendations are just and reasonable to the customers of the  
5 Companies, consistent with PURPA and the FERC's implementing regulations and orders,  
6 non-discriminatory to QFs, and reduce the risk placed on the using and consuming public.

7 **Q. WILL YOU UPDATE YOUR TESTIMONY BASED ON INFORMATION THAT**  
8 **BECOMES AVAILABLE?**

9 **A.** Yes. ORS fully reserves the right to revise its recommendations via supplemental  
10 testimony should new information not previously provided by the Company, or other  
11 sources, becomes available.

12 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

13 **A.** Yes.